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Published December 01, 2012, 06:36 PM

Fracking secrets by thousands keep Americans clueless on wells

Texas, Louisiana, Montana, New Mexico and North Dakota all require disclosure of chemicals used in fracking, but they leave it up to energy companies to determine what chemicals can be labeled trade secrets.

By:

Ben Elgin, Benjamin Haas and Phil Kuntz, Bloomberg News

Talk about it

A subsidiary of Nabors Industries Ltd. pumped a mixture of chemicals identified only as "EXP- F0173-11" into a half-dozen oil wells in rural Karnes County, Texas, in July.

Few people outside Nabors, the largest onshore drilling contractor by revenue, know exactly what's in that blend. This much is clear: One ingredient, an unidentified solvent, can cause damage to the kidney and liver, according to safety information about the product that Michigan state regulators have on file.

A year-old Texas law that requires drillers to disclose chemicals they pump underground during hydraulic fracturing, or "fracking," was powerless to compel transparency for EXP- F0173-11. The solvent and several other ingredients in the product are considered a trade secret by Superior Well Services, the Nabors subsidiary. That means they're exempt from disclosure.

Drilling companies in Texas, the biggest oil-and-natural gas producing state, claimed similar exemptions about 19,000 times this year through August, according to their chemical- disclosure reports. Data from the documents were compiled by Pivot Upstream Group, a Houston-based firm that studies the energy industry, and analyzed by Bloomberg News. Nationwide, companies withheld one out of every five chemicals they used in fracking, a separate examination of a broader database shows.

Trade-secret exemptions block information on more than five ingredients for every well in Texas, undermining the statute's purpose of informing people about chemicals that are hauled through their communities and injected thousands of feet beneath their homes and farms, said Lon Burnam, a Democratic state representative and a co-author of the law.

"This disclosure bill has a hole big enough to drive a Mack truck through," Burnam says of the law, which he called "much compromised legislation."

"Is it meaningless because there are so many exemptions?" he asked. "I'm afraid it may be."

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The Texas disclosure bill marks a growing effort by the oil and gas industry to address public concerns about fracking, a drilling technique in which millions of gallons of water, sand and chemicals are pumped underground to free up more hydrocarbons. While the method has unlocked vast new sources of energy, safety questions center on the hundreds of chemicals used — many of them known carcinogens. The federal Environmental Protection Agency has little authority to regulate fracking; Congress decided in 2005 that the bureau wouldn't oversee the practice.

The 2010 documentary film "Gasland" showed homeowners near fracked wells igniting the water that flowed from their faucets. A year later, the EPA linked fracking to contaminated drinking water in Pavillion, Wyo. The agency is retesting the Wyoming wells. A separate report from the U.S. Geological Survey this year confirmed the environmental agency's initial finding; it detected levels of methane, ethane, diesel compounds and phenol, which the EPA had identified in 2011.

Companies including Houston-based Halliburton Co. have embraced the Texas law as a model that "provides an enormous amount of information to the general public" while protecting trade secrets from competitors, said Susie McMichael, a company spokeswoman.

"Without such protection, companies would have no incentive to develop and put into use new technologies that are both environmentally beneficial and more effective," McMichael said in an email.

In August, the largest well-servicing companies that worked in Texas withheld the most information about frack jobs. Wells serviced by Halliburton and Houston-based Baker Hughes Inc., the second- and third-largest oilfield services companies respectively, contained more than nine secrets per well according to reports filed by the companies. Frack jobs by Superior Well Services, the Nabors subsidiary, omitted the most information with more than 32 secrets per well.

For neighbors of fracked wells, the omissions mean they can't use the disclosures to watch for frack fluids migrating into creeks, rivers and aquifers, because they don't know what to look for, says Adam Briggie, who is chairman of a citizen's group in Denton, Texas, called the Denton Stakeholder Drilling Advisory Group.

"We can't test to see what is coming into the environment," says Briggie, 35, who also works as an assistant professor of philosophy at the University of North Texas in Denton. "If frack fluids are so harmless, why do they hold onto these trade secrets so strongly?"

Dennis Smith, a Nabors spokesman, didn't reply to several emails and phone messages requesting comment. Baker Hughes provides information on its fracking fluids "in a format that minimizes intellectual-property-rights risks to our products," according to a statement emailed by company spokeswoman Pamela Easton.

Halliburton's McMichael noted that the Texas rules were written with input from environmental groups, including Environmental Defense Fund, a New York-based environmental group whose president, Fred Krupp, has called the supply of natural gas that may be liberated by fracking "a potential game changer."

The Texas rules could "help industry do something that industry has trouble doing for itself — gain the public's trust," wrote Scott Anderson, a senior policy adviser to EDF, in an October 2011 letter to the Texas Railroad Commission, which regulates oil and gas drilling in the state.

Yet the regulations "could wind up hurting public confidence rather than helping," particularly if companies report fewer chemicals than the public expects, Anderson wrote. In an interview this week, Anderson said that while EDF considers the Texas rule "landmark legislation" that won industry support for disclosing chemicals, the group doesn't support the final version because it was watered down.

Industry lobbyists made it clear that they wanted strong trade-secret protections, "but they didn't say it would be this heavily utilized," said Cyrus Reed, acting director of the Sierra Club's Lone Star chapter, who worked with companies to

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develop the rule. "It is disappointing to see this many trade secrets being claimed."

The law, signed by Gov. Rick Perry, a Republican, in June 2011, requires companies to disclose their fracking chemicals on FracFocus, a national website that the energy industry helped create in 2011 to allow for voluntary disclosure. Bloomberg News reported in August that more than 40 percent of wells fracked in eight major drilling states last year had been omitted from the voluntary site.

Oil and gas companies are permitted to withhold disclosure of chemicals and their concentrations in any product that they claim to be a trade secret under the Texas law. Such claims can be challenged by state regulators and landowners of well sites or adjacent parcels.

Several other states that require disclosure of fracking chemicals, including Louisiana, Montana, New Mexico and North Dakota, also leave it up to energy companies to determine what chemicals can be labeled secrets. North Dakota's rule requires companies to report fracking chemicals to FracFocus, beginning last April.

"We require whatever FracFocus requires," said Alison Ritter, a spokeswoman for the state Department of Mineral Resources' Oil and Gas Division.

The FracFocus website states that chemicals should be disclosed unless they're a trade secret, as defined by the Occupational Safety and Health Administration. The operators of FracFocus, which is supported by funds from the industry, don't check trade-secret claims or offer a way to challenge an exemption.

Mike Paque, the executive director of the Groundwater Protection Council, a group of state water officials that's one of the operators of FracFocus, didn't respond to requests for an interview.

"We have successfully fulfilled our commitment . . . to ensure that Texans know every single ingredient used in the hydraulic fracturing process," said Elizabeth Ames Jones, then-chairwoman of the Texas Railroad Commission, when the law was signed last year. "Texans can be assured they will know more about what is going into the ground for fracturing than what goes into a can of soda," she said.

Jones said this month that she's proud of what Texas did. "There are people who want to use scare tactics to drive an agenda that is not good for America," she said in an email.

The 19,000 trade-secret claims made in Texas this year through August hid information that included descriptions of ingredients as well as identification numbers and concentrations of the chemicals used. Overall, oil and gas companies withheld information on about one out of every seven ingredients they pumped into 3,639 wells.

In 5,000 other instances, Texas well operators failed to disclose information without saying why, filling in boxes on forms with "N/A" or "mixture," for example, or leaving them blank. Such omissions raised the total to almost seven secrets per well from about five.

Nationally, companies claimed trade secrets or otherwise failed to identify the chemicals they used about 22 percent of the time, according to a Bloomberg News analysis of FracFocus data for 18 states. The data were compiled and released this month by SkyTruth.org, a website that uses data and digital mapping to investigate environmental issues.

Among states with at least 250 fracked wells, Oklahoma had the most unknown components; almost a third were listed as trade secrets or had no valid identification numbers attached to them.

A smaller sample from Texas, the 370 wells that were reported in August 2012, showed that the number of secrets per well increased to almost eight when small frack jobs — those using less than 100,000 gallons of water — were excluded.

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Although oil and gas companies submit the disclosures, the well-servicing companies they hire decide which chemicals will be disclosed or kept secret, said Halliburton's McMichael and others. The number of ingredients they withhold from disclosure can vary widely, based on the August data.

Wells serviced by Geneva-based Weatherford International Ltd. averaged 0.1 secrets per well, while Baker Hughes averaged 9.1; Halliburton, 9.3; and Superior Well Services, 32.5.

Melanie Kania, a spokeswoman for Weatherford, declined to comment.

Most of the secret chemicals are described only in general terms, such as "polymer" or "surfactant," leaving little clue about their contents, said Theo Colborn, president of The Endocrine Disruption Exchange. The Paonia, Colo.-based nonprofit, which is staffed by scientists, studies chemicals that interfere with human development and has criticized regulatory approaches to fracking.

Texas wasn't the first state to require disclosure of frack ingredients. In September 2010, Wyoming enacted a similar law, which requires an extra step to claim a trade secret. Companies need to apply with state regulators to explain why they need trade-secret protection for specific ingredients.

Since that rule went into effect, the Wyoming Oil and Gas Conservation Commission has approved 78 additives as trade secrets and rejected six such requests, according to Lori McCoy, a support specialist for the state agency.

Recently, more states are following the Texas model — with an assist from industry. In December 2011, the American Legislative Exchange Council (ALEC), a Washington-based public policy organization that brings together corporations and legislators to craft bills for states, adopted model legislation that is almost identical to the Texas rule.

The model bill was sponsored inside ALEC by Exxon Mobil Corp., which also advises the council from a seat on its "private enterprise board," according to ALEC documents obtained by Common Cause, a nonprofit group in Washington.

So far, legislators in eight states have proposed bills based at least in part on the ALEC model, according to Todd Wynn, the director of the organization's task force on energy, environment and agriculture.

The main author of the Texas bill said other states will tailor the language to their needs.

"Can it be better and should it be better?" asked State Rep. Jim Keffer, a Republican. "Yes, and I think it will be better. People are going to use this bill as a base and then make it fit their state's attitude or their industry."

His Democratic co-author disagreed. It would be "a horrible mistake" for other states to use the Texas bill as a blueprint, Burnam said.

"Texas state government has been a wholly owned subsidiary of national oil and gas interests for a century," he says. "Do not look at it for guidance on anything related to protecting public health and safety."

— With assistance from Jim Polson.

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Myriad fracking secrets keep Americans clueless on wells **Pittsburgh Post-Gazette - Online**

12/01/2012

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December 1, 2012 12:02 am

By Ben Elgin / Bloomberg News

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First Published December 1, 2012 12:00 am

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MYRIAD FRACKING SECRETS KEEP AMERICANS CLUELESS ON WELLS **Pittsburgh Post-Gazette**

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Mladen Antonov, AFP, Getty Images / While fracking has unlocked vast new energy sources, many of the chemicals used in the process are known carcinogens.;

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